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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**BRANDI SCHULTZ**, an individual,

Plaintiff,

v.

**LEWIS & CLARK COLLEGE**, an Oregon  
domestic non-profit entity,

Defendant.

Case No. 3:22-CV-00355-YY

**FIRST AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff alleges the following:

**JURISDICTION**

1.

Federal Court jurisdiction exists pursuant to the 20 USC § 794 et seq. and 42 USC §§ 12181 et seq. Supplemental jurisdiction arises under 28 USC § 1367 for all common law and State of Oregon claims.

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## **VENUE**

2.

Venue is proper in the U.S. District Court of Oregon, Portland Division because all acts alleged herein occurred in Multnomah County, State of Oregon.

## **PARTIES**

3.

At all material times, Plaintiff Brandi Schultz (“Schultz”), was a resident and domiciliary of Multnomah County, State of Oregon.

4.

At all material times, Defendant Lewis & Clark College (“L&C”) was and is an Oregon not for profit entity doing business throughout Oregon and headquartered in Multnomah County, State of Oregon. L&C maintains an active campus in the City of Portland, Multnomah County where it conducts regularly sustained business and education activities.

## **STATEMENT OF THE CASE**

5.

L&C provides undergraduate and graduate degree programs through its College of Arts & Science, Law School, and Graduate School of Education and Counseling. The Graduate School of Education and Counseling contains a Master of Arts in Art Therapy program of study.

6.

L&C’s Art Therapy program originated at Marylhurst University. When Marylhurst University closed in 2018 L&C acquired its Art Therapy program and current students including Schultz.

7.

Schultz began her studies at L&C in the Fall of 2018.

8.

Tuition at L&C approximates \$55,000 per year.

9.

Schultz is a Native American woman, non-traditional student, with disabilities.

Marylhurst University accommodated Schultz' disabilities which leveled the playing field allowing her to maintain passing grades.

10.

Unlike her experience at Marylhurst University, L&C was oppressive and discriminatory. Schultz notified L&C of her disabilities and need for accommodations, but L&C did not provide her with accommodations. When L&C did provide accommodations, it did not follow or implement them.

11.

L&C's Graduate School of Education and Counseling maintains a strict "no miss" attendance practice or policy with no exceptions. During her time at L&C Schultz was required to appear in court and missed two class sessions. As a result, L&C reduced her grades in two classes a full letter grade down.

12.

Schultz was denied assistance for her disability from L&C's writing center. This denial was in spite of the L&C's promise that

Above all, [L&C Writing Center] are deeply committed to the belief that everyone can learn to craft clear, thoughtful, and even elegant prose. Please come see us,

because writing skills will serve you far beyond Lewis & Clark, not just in your career, but in living a reflective life and advocating with a voice in the things that matter most to you.

13.

L&C convened a review panel for Schultz. On that panel was Pilar Hernandez-Wolfe who previously provided marital counseling to Schutz and her ex-husband. Professor Hernandez-Wolfe remained on the panel and told Schultz to stop trying to get people to feel sorry for her. The panel, including Professor Hernandez-Wolfe, required Schultz to write a paper on her disabilities and its impact on others in the classroom. The panel asked Schultz to present a piece of her artwork for feedback to publicly shame her. The Art Therapy Master's program does not contain a public exhibition component.

14.

L&C's graduate catalog partly forms the contract between the parties. It provides admission and graduation requirements, program and course descriptions, policies and procedures, and other information related to study in the graduate school. L&C's 2018-19 Graduate Catalog contains the following promises, terms, conditions, and warranties:

Therefore, the institution explicitly acknowledges and affirms its conviction that diversity with respect to race, ethnicity, national origin, socioeconomic background, religious orientation or spirituality, physical or sensory disability, gender, and sexual orientation on the Lewis & Clark campuses provides an educational benefit for all students that can be realized only by enhancing and preserving the presence of students and education professionals from diverse backgrounds within our learning community. In creating and sustaining such a community, we engage, to the extent possible, in practices that will ensure a high degree of diversity on our campuses, simultaneously meeting the highest standards of academic excellence of which we are capable.

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15.

L&C publishes the following statements on its website:

### **Mission**

The mission of Lewis & Clark's Art Therapy program is to prepare competent, creative, and reflective art therapists who are committed to equity-based clinical and community praxis. Students learn to apply relationally and socially attuned art therapy using art making to deepen awareness of self and others within societal and cultural contexts.

For applicants who are interested in pursuing the LPC, candidates should contact program director Mary Andrus to discuss the pathway offered in the program.

### **Three Overarching Goals of the Art Therapy Program**

1. Continuously deepen self-understanding through personal growth experiences, reflective practice, and personal art-making to strengthen a personal connection to the creative process, assist in self-awareness, promote well-being, and guide professional practice.

2. Distinguish among the therapeutic benefits of a variety of art processes and media, strategies and interventions, and their applicability to the treatment process for individuals, groups, and families.

3. Recognize the impact of oppression, prejudice, discrimination, and privilege on access to mental health care, and develop responsive practices that include collaboration, empowerment, advocacy, and social justice action.

### **Employment and Graduation Rate**

Almost all of our students get jobs soon after graduating. The employment rate within 9 months to one year post graduation is around 85% but all of 2016 cohort was employed within a year. Often practicum sites will hire the student if they have an opening.

Indeed, with any counseling degree, there are a certain number of post-graduate experience hours required for credentialing and licensing that cannot be obtained when one is a student.

### **What is the pay to be a therapist?**

You could expect to earn the same salary as any mental health professional who has a master's degree and similar credentials. According to a 2009 survey conducted by

the American Medical Association salaries for those just beginning in the career are generally around \$30,000 to \$40,000 while those with experience may earn salaries over \$70,000. Typically the salaries of experienced professionals range between \$40 and 50,000. Keep in mind that salaries will vary considerably, depending on experience, location and type of practice.

<https://graduate.lclark.edu/programs/art-therapy/faqs/>

16.

L&C's course syllabi, forming in part the contract between the parties, contains the following promises, terms, conditions, and warranties:

#### NONDISCRIMINATION

Lewis & Clark College adheres to a nondiscriminatory policy with respect to employment, enrollment, and program. Lewis & Clark does not discriminate on the basis of actual or perceived race, color, sex, religion, age, marital status, national origin, the presence of any physical or sensory disability, veteran status, sexual orientation, gender identity, or gender expression and has a firm commitment to promote the letter and spirit of all equal opportunity and civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, the Age Discrimination Act, the Americans with Disabilities Act of 1990, and their implementing regulations.

Disability Services Statement: If you have a disability that may impact your academic performance, you may request accommodations by submitting documentation to the Student Support Services Office in the Albany Quadrangle (503-768-7192). After you have submitted documentation and filled out paperwork there for the current semester requesting accommodations, staff in that office will notify me of the accommodations for which you are eligible.

17.

L&C's Student Support Services approved and promised the following accommodations for Schultz:

This email is to inform you that Student Support Services has approved you for the below listed accommodations based on the documentation you have provided our office. The following accommodations are among those identified in Section 504 of the National Rehabilitation Act of 1973, which deals with non-discrimination of students with disabilities in postsecondary settings. While qualified for the range of accommodations listed on the attached Notice, the student may choose not to request all

of these accommodations for a particular course. The Notice of Accommodations has been prepared through consultation between Student Support Services staff and the above named student, based on the documentation by a qualified professional. This information should be considered confidential.

Alternative Text: recorded or electronic (facilitated by Student Support Services)  
Exams: Time and a half on exams  
Note takers (facilitated by Student Support Services)  
Exams: Reduced-distraction testing space

18.

During the Spring term, 2020 Professor Mary Andrus told Schultz that was going to fail Schultz despite the fact that her final exam was not done or submitted.

19.

In May 2020 L&C's Graduate School of Education and Counseling's Dr. Teresa McDowell expelled Schultz from its Art Therapy program.

### **FIRST CLAIM FOR RELIEF**

(Breach of Contract)

20.

Schultz realleges and incorporates by reference paragraphs 1 through 19 above.

21.

Schultz has performed all conditions precedent to her contract with L&C.

22.

L&C admitted Schultz into its graduate program which it absorbed from Marylhurst University in 2018 and accepted Schultz as a qualified graduate student to complete the Art Therapy Program.

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23.

The contract between L&C and Schultz consists of admission or enrollment agreements from it and Marylhurst University, L&C's 2018-19 Graduate Catalog and addendum, and L&C's syllabi, bulletins, circulars, website, and regulations which were made available to Schultz.

24.

L&C breached its contract with Schultz in the following particulars:

- a. By failing to accommodate her known disabilities;
- b. By denying her access to the writing center;
- c. By convening a biased review panel including a therapist who previously counseled Schultz;
- d. By failing to follow its Nondiscrimination Policy;
- e. By enforcing a "no miss" attendance policy without exception for protected activities such as attending court;
- f. By requiring Schultz to write a paper on her disabilities and its impact on others;
- g. By requiring Schultz to present artwork for public shaming;
- h. By failing to maintain Schultz's privacy associated with her disability;
- i. By failing to safeguard Schultz from L&C faculty, adjunct, and employees conspiring to dismiss or otherwise frustrate Schultz from completing her degree.

25.

As a natural and necessary result of L&C's breach of contract, Schultz is damaged by unnecessarily incurring debt in the approximate amount of \$100,000, loss of other educational opportunities, loss of future income, and loss of the benefit of the bargain in an amount to be proved at trial.



## **SECOND CLAIM FOR RELIEF**

(Section 504)

26.

Schultz realleges and incorporates by reference paragraphs 1 through 25, above.

27.

Schultz is a person with disabilities, and her disabilities substantially limit major life activities including, but not limited to, employment and education.

28.

L&C was aware of Schultz's disabilities but failed to provide her with reasonable accommodations.

29.

L&C receives Federal monies by and through the Federal Student Financial Aid program and, upon information and belief, other Federal money through grants.

30.

As a result of L&C's deliberate refusal to accommodate Schultz's known disabilities, Schultz suffered the loss of her graduate education to her economic damages in an amount to be proven at trial.

31.

Schultz is entitled to an award of her attorney fees and costs pursuant to 29 USC § 794a.

## **THIRD CLAIM FOR RELIEF**

(Title III of the ADA)

32.

Schultz realleges and incorporates herein by reference paragraphs 1 through 31, above.

33.

Schultz is a qualified individual with a disability who was eligible to receive accommodations and to participate in L&C's graduate program.

34.

L&C was aware that Schultz was a qualified individual with a disability, but solely by reason of her disability, L&C intimidated and excluded Schultz from further participation in L&C's graduate school education.

35.

L&C receives Federal monies by and through the Federal financial aid program, and, upon information and belief, other Federal money through grants.

36.

As a result of L&C's deliberate refusal to accommodate Schultz's disabilities in light of the known circumstances, Schultz suffered emotional distress, embarrassment, humiliation, anxiety, stress, and fear, and ultimately, and loss of a graduate education. Schultz seeks injunctive relief requiring L&C to implement policies mandating professors implement approved accommodations and mandating training of every individual who teaches at L&C on providing and implementing approved accommodations.

37.

Schultz is entitled to an award of her attorney fees and costs pursuant to 42 USC § 12205.

#### **FOURTH CLAIM FOR RELIEF**

(Negligence)

38.

Schultz realleges and incorporates by reference paragraphs 1 through 37 above.

39.

L&C owes a special duty to Schultz as professionals and educators in acting on Schultz's behalf in directing and controlling her education and implementing her approved accommodations.

40.

L&C breached its special duty to Schultz, as alleged above and incorporated herein, by failing to exercise reasonable care under its own policies and contractual obligations in the performance of its official duties, and, by failing to do so, proximately and foreseeably caused Schultz's injuries, damages, and losses.

41.

L&C was negligent in its conduct related to Schultz in the following particulars:

- a. By failing to accommodate her known disabilities;
- b. By denying her access to the writing center;
- c. By convening a biased review panel including a therapist who previously counseled Schultz;
- d. By failing to follow its Nondiscrimination Policy;
- e. By enforcing a "no miss" attendance policy without exception for protected activities such as attending court;
- f. By requiring Schultz to write a paper on her disabilities and its impact on others;
- g. By requiring Schultz to present artwork for public shaming;
- h. By failing to maintain Schultz's privacy associated with her disability;
- i. By failing to safeguard Schultz from L&C faculty, adjunct, and employees conspiring to dismiss or otherwise frustrate Schultz from completing her degree.

42.

As a result of L&C's failure to act with due care on behalf of Schultz, Schultz suffered anxiety, stress, emotional distress, and fear all to her economic and non-economic damages in an amount to be proven at trial.

**WHEREFORE**, Schultz prays for the following relief:

1. On her First Claim for Relief, for actual, consequential, and foreseeable damages to be proven at trial and as determined by a jury.
2. On her Second Claim for Relief, for actual and consequential damages to be proven at trial and as determined by a jury.
3. On her Third Claim for Relief, for injunctive relief requiring L&C to implement policies mandating and confirming the implementation of approved accommodations and mandating training of every individual who teaches at L&C on providing and implementing approved accommodations.
4. On her Fourth Claim for Relief, for actual and proximately caused foreseeable economic and noneconomic damages to be proven at trial and as determined by a jury.
5. For Schultz's attorney fees pursuant to 42 USC § 12205 and 29 USC § 794a.
6. For Schultz's costs and disbursements herein.

For any and all other relief the Court deems just and equitable.

DATED this 8<sup>th</sup> day of June, 2022.

THE BRAGUE LAW FIRM

By: 

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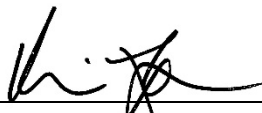
### CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing FIRST AMENDED COMPLAINT on the party listed below by the following indicated method or methods:

Chris M. Morgan, OSB No. 175384  
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- ☒ by electronic means through the U.S. District Court, District of Oregon's CM/ECF document filing system.
- ☐ by mailing a full, true and correct copy thereof in a sealed, first-class postage paid envelope, addressed to the address as shown above, with the U.S. Postal Service at Portland, Oregon, on the date set forth below.
- ☐ by causing a full, true, and correct copy thereof to be hand-delivered to the attorney at the attorney's last known office address listed above on the date set forth below.
- ☐ by faxing a full, true, and correct copy thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, on the date set forth below.

DATED this 8<sup>th</sup> day of June, 2022.

  
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Kevin C. Brague, OSB No. 050428